



INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

February 23, 2012

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Barry R. Wallerstein, D.Env.
Executive Officer
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, California 91765

Re: Rule 1144 – Metalworking Fluids and Direct-Contact Lubricants

Dear Dr. Wallerstein:

The Independent Lubricant Manufacturers Association ("ILMA") has concerns with continuing efforts by the WD-40 Company ("WD-40") to seek either an administrative or legislative exemption from liability for all of its products under the "prohibition of sale" provision in Rule 1144. The total exclusion of WD-40's products from Rule 1144 would frustrate the District's air quality goals in the rule, and it would give inequitable treatment to ILMA's members and other suppliers of metalworking fluids and direct-contact lubricants who already have made significant efforts to comply with Rule 1144.

As you know, ILMA and its members worked closely with the District's staff in the development, adoption and amendment of Rule 1144. Further, ILMA is co-sponsoring with the District the March 8, 2012 symposium on metalworking fluids and Rule 1144. With the exception of WD-40, there was, and continues to be, general consensus from industry that Rule 1144, as amended, is workable and that compliant products under the rule can be, and are being, provided to end users in the South Coast Basin.

In reviewing the regulatory "evolution" of Rule 1144, the District did incorporate many suggestions made by WD-40 during the rulemaking process for Rule 1144, including:

- The exclusion of maintenance and repair activities;
- The exclusion of household, commercial and institutional uses; and,
- The exemption of consumer products from prohibition of sale and labeling.

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Although WD-40 opposed the U.S. Environmental Protection Agency's State Implementation Plan approval of Rule 1144, as amended, the company did not file suit, seeking judicial review of the final rule. Instead, WD-40 now seeks to have either the District or the California Legislature provide it retroactively with a full exemption from liability or indemnification for any sale of its products for non-compliant purposes under Rule 1144. Stated

differently, WD-40 seeks for its consumer products to be unregulated if used in parts manufacturing and assembly. Frankly, if such an exemption were to be granted, it should apply either to all suppliers of regulated metalworking fluids and direct-contact lubricants, rather than to just to one company, or consumer products should be allowed to be used only in parts manufacturing and assembly operations in the same manner that a consumer would use them — that is, in consumer-sized containers where the duration and frequency of use (and, therefore, emissions) is not greater than what the typical consumer would experience.

ILMA opposes the “WD-40 exemption” for three reasons. First, under Rule 1144(d)(2)(B), a manufacturer generally would not be liable for a violation where an end-user had used a regulated lubricant in a non-compliant manner, provided the manufacturer provides its distributors with the written notice provided in the rule. ILMA members have informed the Association that they have notified their distributors with the required written notice. Further, many ILMA members have provided instructions or training to their distributors (and end-users) on compliance with Rule 1144. ILMA understands that the District has worked with WD-40 on an Advisory Notice and an “On the Air” video. Accordingly, we find it somewhat perplexing that WD-40 is not satisfied with the same liability protection afforded to all suppliers under Rule 1144(d)(2)(B).

Second, ILMA members have reported to the Association that they have spent the past two years developing Rule 1144 compliance strategies. Such strategies include the reformulation of their metalworking fluids and direct-contact lubricants as “super compliant” products under the rule, as well as the discontinuation of sale of certain non-compliant products into the South Coast Basin. These efforts have not been without the expenditure of considerable time and money, including laboratory and field testing. It would be extremely unfair to suppliers of metalworking fluids and direct-contact lubricants if, following a lawful, open public process in promulgating Rule 1144, either the District or the California Legislature were to pick one company — that is, WD-40 — as a “winner” because maybe a dozen out of 2,000 uses of its product at most are affected by the rule.

Third, anecdotal information from ILMA members suggests that WD-40’s products are *not* routinely used in parts manufacturing and assembly operations in the South Coast Basin or across the country. Instead, WD-40 has an excellent reputation for its products being used for typical repair and maintenance purposes, which are excluded from coverage under Rule 1144. If WD-40 were to receive a full exemption for its products under Rule 1144, then the company would have the unfettered ability to sell its non-compliant products in other than consumer-sized containers for use in parts manufacturing and assembly in the South Coast Basin. WD-40 effectively would have no regulatory barriers under Rule 1144 and could sell its products for these uses without regard to the rule. This simply is unfair to other suppliers and it would frustrate, if not retard, the District’s air quality goals from Rule 1144.

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ILMA appreciates this opportunity to share its views. We hope that the District and the California Legislature will reject WD-40's demand for a full exemption of its products from Rule 1144.

Sincerely,

A handwritten signature in black ink that reads "Celeste Powers". The signature is written in a cursive, flowing style.

Celeste M. Powers, CAE
Executive Director

cc: ILMA Board of Directors
ILMA Metalworking Fluids Committee
Michael Morris, AQMD
Jeffrey L. Leiter, Esq.